IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

WP(C).No. 27864 of 2006(P)

RFA.37/2004 of DISTRICT COURT,KOLLAM
OS.80/2000 of MUNSIFF COURT, KARUNAGAPPALLY
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PETITIONERS:
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1. DEVAKY, SURESH BHAVAN,
NJAKKANAL MURI, OACHIRA VILLAGE.

2. SUDHAKARAN OF DO. DO.

BY ADV. SRI.B.KRISHNA MANI

RESPONDENTS:

BABURAJAN,
MARANGATTU VADAKKETHIL,
NJAKKANAL MURI, OACHIRA VILLAGE.

BY ADV. SRI.J.OM PRAKASH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.27864/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE DECREE DT. 29.6.02 IN OS. NO.80/2000 FILED BY THE RESPONDENT BEFORE THE MUNSIFF'S COURT, KARUNAGAPPALLY.

EXT.P2:- COPY OF THE APPEAL MEMORANDUM, RFA. NO.37/04 BEFORE THE DISTRICT COURT, KOLLAM.

EXT.P3:- COPY OF THE APPLICATION DT. 6.4.04 SEEKING TO CONDONE DELAY IN FILING THE APPEAL.

EXT.P4:- COPY OF THE APPLICATION, IA. NO.1419/05 DT. NIL.

EXT.P5:- COPY OF THE ORDER DT. 12.4.0.6.

/TRUE COPY/

P.A. TO JUDGE

tss

M.N.KRISHNAN, J

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W.P.(C) No.27864 OF 2006

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Dated this the 29th day of November 2007

JUDGMENT

This writ petition is filed against the order of the District Court, Kollam in I.A.Nos.1419 & 1420 of 2005 in RFA No.37 of 2004. Defendants in the suit had preferred an appeal as RFA No.37 of 2004 with a petition to condone the delay of 577 days. For not taking of steps in the delay condonation application, the appellate court dismissed the same and as a consequence dismissed the appeal itself. In order to restore the delay condonation application, the present applications are filed where also there is a delay of 191 days. It is averred that on account of the death of their counsel on 30.12.2004 they were unable to take steps in time and therefore indulgence may be shown.

2. Heard the counsel for the respondent-plaintiff as well. He is fair enough in stating that he does not stand in the way of disposal of the appeal on merits, provided the bona fides of the defendants is proved by depositing the amount before court. Learned counsel for the petitioners also submits that the court can give direction in that regard, so that there can be a finality

to the matter. After hearing both sides and considering the peculiar facts and circumstances of the case, I am inclined to give a chance to the defendants to prosecute the appeal on merits. Therefore instead of allowing I.A.Nos.1419 & 1420 of 2005 alone, I feel that after allowing that the delay in filing the appeal can also be condoned and the appeal also can be restored on condition that the petitioners herein, viz., the defendants deposit a sum of Rs.50,000/- before the executing court within two months from today.

Therefore, the writ petition is allowed as follows: I.A.Nos.1419 & 1420/2005 are allowed and the application to condone the delay in filing the appeal will also be allowed and the appeal will be restored to file provided defendants deposit a sum of Rs.50,000/-(rupees fifty thousand only) before the executing court within two months from today. If they fail to deposit the amount, the writ petition as well as the orders passed herein will stand cancelled. If the amount is deposited, the learned District Judge is directed to allow I.A.Nos.1419 & 1420/2005, restore the delay condonation application and allow the same and thereafter restore the appeal back to file and dispose of the matter in accordance with law, within a time frame of 3

months from the date of first posting. Fresh notice need not be served on the parties and it may be given to the counsel appearing in the trial court.

M.N.KRISHNAN, JUDGE

Cdp/-